

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ADRIAN LEWIS CHATEN,

Plaintiff,

v.

RON VAN BOENING, DANIEL
FITZPATRICK, MIKE HINES,
MICHAEL A. FLEMMING, RYAN T.
DENZER, and GEORGE GILBERT,

Defendants.

No. C09-5615 RJB/KLS

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 40), plaintiff's motion to deny defendants' motion to dismiss (Dkt. 42), defendants' objections to the Report and Recommendation (Dkt. 41), plaintiff's response to defendants' objections (Dkt. 44) and the remaining record, does hereby find and **ORDER:**

- 1) Defendants object to the Report and Recommendation, insofar as the magistrate judge recommends that plaintiff's due process claims be permitted to proceed. (Dkt. 41). This Report and Recommendation relates to a motion to dismiss. Defendants maintain that plaintiff has no due process interest in his placement in administrative segregation or in a classification decision to place plaintiff on a "program." It is unclear whether the decision to place plaintiff on a "program" is the result of a disciplinary decision or is a classification decision. It is unclear from the complaint what a "program" is. It is unclear whether plaintiff's placement in administrative segregation constituted an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. *Sandin v. Conner*, 515 U.S. 472, 483-487 (1995). There are too many questions to warrant dismissal at the complaint stage. The Court adopts the Report and Recommendation (Dkt. 40).
- 2) Defendants' Motion to Dismiss (Dkt. 37) is **GRANTED** in part as to Plaintiff's equal protection claim and the claims against Defendants Fitzpatrick and Van

Boening, and these claims are **DISMISSED**. Defendants' Motion to Dismiss (Dkt. 37) is **DENIED** as to plaintiff's due process claims, and these claims may proceed.

- 3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendant and to the Hon. Karen L. Strombom.

DATED this 15th day of November, 2010.

A handwritten signature in black ink, reading "Robert J. Bryan", written over a horizontal line.

ROBERT J. BRYAN
United States District Judge